COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts.	)	D.T.E. 01-20 (Part A)

COMMENTS OF WORLDCOM, INC. ON THE MOTION OF VERIZON MASSACHUSETTS FOR EXTENSION OF COMPLIANCE FILING DATE AND TIME FOR FILING PETITIONS FOR RECONSIDERATION

AND

CROSS-MOTION OF WORLDCOM, INC. FOR THE IMMEDIATE ADOPTION OF INTERIM RATES

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CROSS-MOTION OF WORLDCOM, INC. FOR THE IMMEDIATE ADOPTION OF INTERIM RATES

WorldCom, Inc. ("WorldCom") hereby submits its comments on the motion of Verizon Massachusetts for extension of compliance filing date and time for filing petitions for reconsideration. In addition, WorldCom hereby moves for the immediate adoption of interim unbundled network element rates for switching, ports, transport and loops based on the rates currently in effect in New York. WorldCom submits that motions for reconsideration should be due twenty days after Verizon submits its compliance filing and that the judicial appeal period be extended until twenty days after the Department rules on motions for reconsideration. WorldCom further submits that Verizon be granted a brief extension of time to submit its compliance filing, but *only* if the Department grants WorldCom's cross-motion for interim rates. If WorldCom's cross-motion is denied, then Verizon *should not* receive an extension for the submission of its compliance filing.

I. Introduction

In deliberating on Verizon's July 23, 2002 request to extend the time for filing its motion for reconsideration and its compliance filing, the Department should consider the following. ***First***, by the Department's own reckoning, new rates are already long overdue. This case was to have been completed – and new, TELRIC-compliant rates were to have been in effect – over seven months ago. ***Second***, as the Department well knows, WorldCom has literally been trying for years to get reduced UNE rates from Verizon. Now, as a result of the Department's July 11, 2002 Order ("*Order*"), "'loop rates' for renting Verizon phone lines 'will be coming down somewhat' to levels 'a little higher than New York,' and Massachusetts switching rates for completing calls will probably be lower than New York."[1] However, should the Department grant Verizon's motion, it is not at all clear when these new rates (which, by their description are expected to be lower than the current Massachusetts rates) will be effective. Indeed, even if the effective date is precisely 35 days after the Department's originally contemplated effective date (*i.e.*, the length of Verizon's requested extension) the delay would still be too long.

Verizon's motion prompted two immediate and very different responses from CLECs. First, AT&T opposed the motion, stating that it is "very important to AT&T, and we believe equally important to other CLECs, that the process of reviewing Verizon's compliance filing begin as soon as possible so that UNE rates may be finalized as soon as possible." AT&T Opposition at 1. The CLEC Coalition, on the other hand, supported Verizon's motion, and

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[1] Boston Globe, July 12, 2002, *DTE Aims to Push Telecom Competition* (quoting Chairman Vasington).

further suggested that motions for reconsideration be extended until twenty days *after* Verizon files its compliance filing, noting that because "parties will not want to waste their resources on issues that do not have a significant economic impact," structuring the schedule to allow parties to assess Verizon's compliance filing and *then* craft their reconsideration motions will spare the Department "the burden of resolving motions for reconsideration that may have a firm theoretical foundation, but have little economic impact." CLEC Coalition Motion at 3.

Both AT&T and the CLEC Coalition are correct. It is of paramount importance to WorldCom to get lower UNE rates in place in Massachusetts as soon as possible. At the same time, it makes little sense for the parties (and more specifically, the CLECs) to commit limited resources to fighting issues without knowing whether the issues actually have a material impact on their bottom line.

To address the concerns of all parties, WorldCom hereby proposes that the Department:

- immediately order Verizon to adopt, on an interim basis and subject to true-up, the switching, port, transport and loop rates currently in effect in New York, pending final resolution of all motions for reconsideration and the establishment of permanent rates consistent with the *Order* and any subsequent orders issued on reconsideration. The New York rates should go into effect on August 5, 2002, the effective date contemplated by the *Order*.

- grant Verizon a *brief* extension of time to file its compliance filing.

- extend the time for filing motions for reconsideration until twenty days *after* the date on which Verizon submits its compliance filing.

- extend the judicial appeal period for all parties until twenty days after the Department issues its order on the to-be-filed motions for reconsideration.

Granting WorldCom's motion will simultaneously permit CLECs to obtain the benefit of the lower rates anticipated by the *Order* and permit all parties to have the time necessary to focus their motions for reconsideration on issues that truly matter to them.

II. Argument

a. The Department Should Immediately Adopt Lower UNE Rates

WorldCom's quest for lower, TELRIC-compliant UNE rates in Massachusetts has been a long one. Indeed it began 1996, when WorldCom (then MCI) sought reconsideration of the Department's Phase 4 Order in the *Consolidated Arbitrations* docket, specifically arguing that the Department was incorrect for failing to consider the very deep discounts that Verizon (then NYNEX) received when purchasing new switches. The Department has now largely agreed with WorldCom, directing that Verizon "must use a blend of 90 percent new switches and ten percent growth switches in its compliance switch cost study." *Order* at 302. As a result of this and other rulings in the *Order*, WorldCom anticipates that UNE rates in Massachusetts will decrease from their current competition-choking levels.

Unfortunately, Verizon's motion will result in WorldCom waiting even longer before (a) knowing precisely what the new, lower UNE rates contemplated by the *Order* are, and (b) realizing the benefits of the lower UNE rates. That is patently unfair. Continued delay in the implementation of new, lower UNE rates harms WorldCom (and benefits Verizon) in two distinct ways. First and most obviously, it requires WorldCom to continue to pay Verizon's current, exorbitant UNE rates for a longer period of time, thereby unjustly enriching Verizon.

Second, delay in the implementation of lower UNE rates prevents WorldCom from even contemplating the expansion of its service territory in the Commonwealth. As the Department knows, WorldCom, under its MCI brand, recently launched "the Neighborhood built by MCI," the first nationwide "all distance" service for residential and small business customers. The "Neighborhood" product utilizes the UNE platform to provide local service to customers. Because of Verizon's prohibitively expensive UNE rates, WorldCom has been forced to limit its "Neighborhood" offering in the Commonwealth to only that fraction of the population in the metro and urban zones. With lower rates, WorldCom would be in a position to assess whether it could extend its offering, for instance, to consumers in the suburban zone. But until lower rates are in effect, WorldCom cannot even consider such an expansion, let alone engage in the steps necessary to undertake expanding its coverage.

Moreover, as sure as night follows day, there will inevitably be disputes regarding the content of Verizon's compliance filing. As Verizon points out in its motion, the Department has required Verizon to submit new studies with its compliance filing. Each of these studies must be examined, and may provide additional issues for reconsideration or clarification. It would, therefore, be more hopeful than realistic to believe that the ultimate delay in establishing permanent rates will last only so long as the thirty-five additional days Verizon has requested for the submission of its compliance filing.

To avoid the inherently unfair and anticompetitive result of lower rates being further delayed, the Department should order Verizon to immediately file interim rates in line with Chairman Vasington's publicly stated expectations. Such rates can be subject to true-up

once the Department wades through the various motions for reconsideration and clarification, and settles all disputes concerning Verizon's compliance filing. Given that the Department originally contemplated August 5, 2002 as the effective date for Verizon's new rates, the interim rates established by the Department should similarly become effective on August 5, 2002.

b. The Department Should Base its Interim Rates on Current New York Rates

On July 12, 2002, the day after the Department issued the *Order*, an article in the Boston Globe stated as follows:

> Paul B. Vasington, chairman of the Department of Telecommunications and Energy, said he expects the 550-page DTE order will bring "network element" rental rates closer to those in New York state. . . . Vasington said the department expects that "loop rates" for renting Verizon phone lines "will be coming down somewhat" to levels "a little higher than New York," and Massachusetts switching rates for completing calls will probably be lower than New York. [2]

The Department of course is familiar with benchmarking its rates to those in New York. In October of 2000, the Department approved Verizon's proposal to adopt the then-in-effect New York switching and transport rates to aid Verizon's attempt to obtain §271 approval from the FCC. Given that the Department has *already* benchmarked the loop and switching rates anticipated from the *Order* to be "a little higher" and "probably" lower, respectively, than those in New York, adopting the current New York rates as the interim Massachusetts rates makes eminent sense. Annexed hereto is Appendix A to the New York Public Service Commission's February 27, 2002 *Order Instituting Verizon Incentive Plan*, Case 00-C-1945, which lists Verizon's "major" unbundled network element rates decided on by the New York PSC in its

January 28, 2002 *Order on Unbundled Network Element Rates*, Case 98-C-1357. WorldCom specifically recommends that the "new" rates identified therein be adopted in Massachusetts on an interim basis. (With respect to the deaveraged loop rates, WorldCom recommends that NewYork's "Manhattan" zone rate apply to the Metro zone, the "Major Cities" rate apply to the Urban and Suburban zones, and the "Rest of State" zone apply to the Rural zone.)

c. Subject to the Department's Adoption of Interim Rates, the Department Should Grant the Requested Extensions

WorldCom agrees that the complexities of this case warrant a brief extension of time for the filing of motions for reconsideration. More importantly, however, WorldCom agrees with the CLEC Coalition that such motions should be filed *after* the parties have the opportunity to review Verizon's compliance filing. As it stands now, Verizon will file, and the parties will need to review, (1) an initial compliance filing, and Verizon *may* be required to file (2) a supplemental compliance filing, should it be shown that Verizon intentionally or inadvertently misapplied the directives in the Department's *Order* in its initial compliance filing, and (3) a compliance filing to conform to the Department's order on motions for reconsideration. That puts the burden on CLECs to review three separate filings, and provides Verizon with three different opportunities to engage in opportunistic interpretations of what it is required to do. Were the Department to structure the schedule so that motions for reconsideration follow Verizon's initial compliance filing, the parties could better assess what aspects of the *Order* are of economic significance, and could request clarification in the event Verizon's interpretation of a Department directive does not comport with what a CLEC would have expected based on the

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[2] Boston Globe, July 12, 2002, *DTE Aims to Push Telecom Competition*.

language of the *Order*. Most importantly, it could conceivably be the case that Verizon would submit only two compliance filings rather than three – an initial filing and a subsequent filing that takes into account CLEC comments on the initial filing, and all parties' motions for reconsideration and/or clarification.

With respect to Verizon's request for additional time to submit its compliance filing, as stated above, any extension delays the effective date of the new rates to WorldCom's detriment. WorldCom therefore strongly objects to any extension of time for Verizon to submit its compliance filing. However, because adoption of WorldCom's proposed interim rates would serve to mitigate that harm, WorldCom would not oppose a *brief* extension for the submission of Verizon's compliance filing *if* WorldCom's cross-motion is granted. Absent the adoption of the proposed interim rates, WorldCom would still support the extension for motions for reconsideration until after the filing of Verizon's compliance filing, but would oppose any extension for the compliance filing itself.

d. The Department Should Not Attempt to Establish "Estimated" UNE Rates Based on the *Order*

In its email memorandum establishing the deadline to file comments on Verizon's motion, the Department sought comments on "the feasibility, if an extension is granted for submission of the compliance filing, of filing estimated UNE rates based upon the Department's July 11, 2002 Order to be placed into effect until submission of the compliance filing." WorldCom does not disagree in principle with this approach, but the fact of the matter is that the debate on what legitimately constitutes an "estimated" rate will take time. WorldCom has already waited far too long for lower UNE rates in Massachusetts. While it might be possible for

the Department and the parties to *eventually* arrive at "estimated" rates that are closer to the permanent rates than the proposed New York rates, this is a case where the Department should not let the perfect be the enemy of the good. Adopting the New York rates is administratively easier, and will more quickly result in lower UNE rates. And because they will be subject to true-up, no party will be prejudiced by their adoption on an interim basis.

e. The Department Should Not Permit a "Staggered" Compliance Filing

The Department also sought comment on " the feasibility of filing the compliance filing on a staggered basis along with proposals as to the order in which the various cost studies and results could be filed should the Department adopt this approach." WorldCom opposes this approach. Allowing the parties some additional time to formulate their arguments is one thing; spreading Verizon's ultimate compliance with the Department's *Order* over a period that could be dragged out for months if not years is something else entirely. Verizon should file its complete compliance filing as soon as is practicable and the parties should present all issues requiring further consideration by the Department shortly thereafter. Staggering the process would result in piecemeal litigation that will perpetuate uncertainty regarding the rates to be applied in Massachusetts.

f. The Department Should Extend the Judicial Appeal Period

WorldCom also supports (and hereby moves for) the extension of the judicial appeal period for a period of twenty days after the Department issues its order on the various reconsideration motions to be filed in response to the *Order*. A petition for appeal of a Department order must be filed with the Department no later than twenty days after service of

the order "or *within such further time as the commission may allow* upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling." G.L. c. 25, § 5 (emphasis added). *See also,* 220 C.M.R. 1.11 (11) (reasonable extensions shall be granted upon a showing of good cause). Good cause is "a relative term and depends on the circumstances of an individual case." *Fitchburg Gas & Electric Light Co.*, D.T.E. 97-115/98-120 (March 31, 1999), citing *Boston Edison Company*, D.P.U. 90-335-A at 4 (1992).

The Department issued its Order on July 11, 2001. A motion for stay of the judicial appeal period in this case must therefore be filed on or before August 1, 2002. Consequently, this motion for stay is timely. This motion for stay is also supported by good cause. WorldCom intends to seek reconsideration on certain issues (a list that may expand or contract depending on the content of Verizon's compliance filing) and therefore seeks this stay of the judicial appeal period in order to avoid burdening the Supreme Judicial Court with an appeal that might be avoided by further proceedings at the Department.

Moreover, in accordance with the Department's usual practice, the Department should stay the judicial appeal period pending a decision on this motion for stay. *See, Fitchburg Gas and Electric Light Co.*, D.T.E. 97-115/98-120-A (March 31, 1999), citing *Nandy*, D.P.U. 94-AD-4-A at n.6 (1994), and *Nunnally*, D.P.U. 92-34-A at 6, n.6 (1993).

III. CONCLUSION

For all the foregoing reasons, WorldCom respectfully requests the Department to:

1. immediately order Verizon to adopt, on an interim basis and subject to true-up, the switching, port, transport and loop rates currently in effect in New York, pending final resolution of all motions for reconsideration and the establishment of permanent rates consistent with the *Order* and any subsequent orders issued on reconsideration. The New York rates should go into effect on August 5, 2002, the effective date contemplated by the *Order*.

2. grant Verizon a *brief* extension of time to file its compliance filing.

3. extend the time for filing motions for reconsideration until twenty days *after* the date on which Verizon submits its compliance filing.

4. extend the judicial appeal period for all parties until twenty days after the Department issues its order on the to-be-filed motions for reconsideration.

Respectfully submitted,

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Dated: New York, New York
July 25, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing upon each person designated on the service list in this proceeding by email and either U.S. mail or overnight courier.

Dated: New York, New York
July 25, 2002

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